

By: Henderson

S.B. No. 1427

A BILL TO BE ENTITLED

AN ACT

relating to liability of subscribers and shareholders of Texas business corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.21, Texas Business Corporation Act, is amended to read as follows:

Art. 2.21. Liability of Subscribers and Shareholders

A. A holder of [~~certificated~~] shares, [~~or uncertificated shares~~], an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted shall be under no obligation to the corporation or to its obligees [~~creditors~~] with respect to:

(1) ^{Such} ~~such~~ shares other than the obligation to pay to the corporation the full amount of the consideration, fixed [as provided by law] in compliance with Article 2.15 of this Act, for which such shares were [~~issued~~] or are to be issued ^Q:

(2) Any contractual obligation of the corporation on the basis of actual or constructive fraud, or a sham to perpetrate a fraud, unless the obligee demonstrates that the holder, owner, or subscriber caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, or subscriber; or

(3) Any contractual obligation of the corporation on the basis of the failure of the corporation to observe any ^{1/2} corporate formality, including without limitation: (a) the failure to comply with any requirement of this Act or of the articles of incorporation or bylaws of the corporation; or (b) the failure to observe any requirement prescribed by this Act or by the articles of incorporation or bylaws for acts to be taken by the corporation, its board of directors, or its shareholders.

^Q B. Nothing contained in this Article shall limit the

4-10-89

4-18-89

5-15-89

obligation of a holder, owner, or subscriber to an obligee of the corporation when:

(1) the holder, owner, or subscriber has expressly assumed, guaranteed, or agreed to be personally liable to the obligee for
the obligation; or

(2) the holder, owner, or subscriber is otherwise liable to the obligee for the obligation under this Act or another applicable statute.

☒ [B] C. Any person becoming an assignee or transferee of certificated shares or of uncertificated shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

☐ [C] ☒ D. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable as a holder of or subscriber to shares of a corporation, but the estate and funds in his hands shall be so liable. - 2/3

☐ [D] ☒ E. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

1 By: Henderson S.B. No. 1427
2 (In the Senate - Filed March 10, 1989; March 13, 1989, read
3 first time and referred to Committee on Economic Development;
4 April 10, 1989, reported favorably by the following vote: Yeas 6,
5 Nays 0; April 10, 1989, sent to printer.)

6 COMMITTEE VOTE

	Yea	Nay	PNV	Absent
7 Harris	x			
8 Green				x
9 Bivins				x
10 Carriker	x			
11 Dickson				x
12 Haley	x			
13 Henderson				x
14 Leedom	x			
15 Ratliff	x			
16 Sims	x			
17 Whitmire				x

19 A BILL TO BE ENTITLED
20 AN ACT

21 relating to liability of subscribers and shareholders of Texas
22 business corporations.

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

24 SECTION 1. Article 2.21, Texas Business Corporation Act, is
25 amended to read as follows:

26 Art. 2.21. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS

27 A. A holder of ~~[certificated]~~ shares, an owner of any
28 beneficial interest in shares, ~~[or--uncertificated--shares]~~ or a
29 subscriber for shares whose subscription has been accepted shall be
30 under no obligation to the corporation or to its obligees
31 ~~[creditors]~~ with respect to:

32 (1) Such shares other than the obligation to pay to
33 the corporation the full amount of the consideration, fixed in
34 compliance with Article 2.15 of this Act, ~~[as provided by law]~~, for
35 which such shares were ~~[issued]~~ or are to be issued;

36 (2) any contractual obligation of the corporation on
37 the basis of actual or constructive fraud, or a sham to perpetrate
38 a fraud, unless the obligee demonstrates that the holder, owner or
39 subscriber caused the corporation to be used for the purpose of
40 perpetrating and did perpetrate an actual fraud on the obligee
41 primarily for the direct personal benefit of the holder, owner, or
42 subscriber; or

43 (3) any contractual obligation of the corporation on
44 the basis of the failure of the corporation to observe any
45 corporate formality, including without limitation: (a) the failure
46 to comply with any requirement of this Act or of the articles of
47 incorporation or bylaws of the corporation; or (b) the failure to
48 observe any requirement prescribed by this Act or by the articles
49 of incorporation or bylaws for acts to be taken by the corporation,
50 its board of directors, or its shareholders.

51 B. Nothing contained in this article shall limit the
52 obligation of a holder, owner, or subscriber to an obligee of the
53 corporation when:

54 (1) the holder, owner, or subscriber has expressly
55 assumed, guaranteed, or agreed to be personally liable to the
56 obligee for the obligation; or

57 (2) the holder, owner, or subscriber is otherwise
58 liable to the obligee for the obligation under this Act or another
59 applicable statute.

60 C. Any person becoming an assignee or transferee of
61 certificated shares or of uncertificated shares or of a
62 subscription for shares in good faith and without knowledge or
63 notice that the full consideration therefor has not been paid shall
64 not be personally liable to the corporation or its creditors for
65 any unpaid portion of such consideration.

66 D [E]. An executor, administrator, conservator, guardian,

1 trustee, assignee for the benefit of creditors, or receiver shall
2 not be personally liable as a holder of or subscriber to shares of
3 a corporation, but the estate and funds in his hands shall be so
4 liable.

5 E [D]. No pledgee or other holder of shares as collateral
6 security shall be personally liable as a shareholder.

7 SECTION 2. The importance of this legislation and the
8 crowded condition of the calendars in both houses create an
9 emergency and an imperative public necessity that the
10 constitutional rule requiring bills to be read on three several
11 days in each house be suspended, and this rule is hereby suspended,
12 and that this Act take effect and be in force from and after its
13 passage, and it is so enacted.

14 * * * * *

15 Austin, Texas
16 April 10, 1989

17 Hon. William P. Hobby
18 President of the Senate

19 Sir:

20 We, your Committee on Economic Development to which was referred
21 S.B. No. 1427, have had the same under consideration, and I am
22 instructed to report it back to the Senate with the recommendation
23 that it do pass and be printed.

24 Harris, Chairman

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAR 17 REC'D

FISCAL NOTE

March 15, 1989

TO: Honorable O. H. "Ike" Harris, Chairman
Committee on Economic Development
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 1427
By: Henderson

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 1427 (relating to liability of subscribers and shareholders of Texas business corporations) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, JWH, AL, SKM, BL

SENATE FAVORABLE COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

April 10, 1989
(date)/(time)

Sir:

We, your Committee on ECONOMIC DEVELOPMENT to which was referred
SB 1427 by Henderson have on 4/10, 1989, had the same
(measure) (sponsor) (hearing date)

under consideration and I am instructed to report it back with the recommendation (s) that it

☒ do pass and be printed

☐ do pass and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

Senate Sponsor of House Measure _____

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
Harris, Chairman	✓			
Green, Vice Chairman				✓
Bivins				✓
Carriker	✓			
Dickson				✓
Haley	✓			
Henderson	✓			✓
Leedom	✓			
Ratliff	✓			
Sims	✓			
Whitmire				✓
TOTAL VOTES	6	1	1	5

Carol W. Sims
COMMITTEE CLERK

Harris
CHAIRMAN

April 18 1989 Engrossed
Fatsy Law
Engrossing Clerk

I certify that the attached is a true and correct
copy of SB 1427, which was
received from the Senate on 4/19/89 and
referred to the Committee on Business Commerce

Bert Messersmith
Chief Clerk of the House

By: Henderson
(Dutton)

S.B. No. 1427

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A. A holder of ~~[certificated]~~ shares, an owner of any
beneficial interest in shares, ~~[or--uncertificated-shares]~~ or a
subscriber for shares whose subscription has been accepted shall be
under no obligation to the corporation or to its obligees
~~[creditors]~~ with respect to:

(1) Such shares other than the obligation to pay to
the corporation the full amount of the consideration, fixed in
compliance with Article 2.15 of this Act ~~[as-provided-by-law]~~, for
which such shares were ~~[issued]~~ or are to be issued;

(2) any contractual obligation of the corporation on
the basis of actual or constructive fraud, or a sham to perpetrate
a fraud, unless the obligee demonstrates that the holder, owner or
subscriber caused the corporation to be used for the purpose of
perpetrating and did perpetrate an actual fraud on the obligee
primarily for the direct personal benefit of the holder, owner, or
subscriber; or

(3) any contractual obligation of the corporation on
the basis of the failure of the corporation to observe any

1 corporate formality, including without limitation: (a) the failure
2 to comply with any requirement of this Act or of the articles of
3 incorporation or bylaws of the corporation; or (b) the failure to
4 observe any requirement prescribed by this Act or by the articles
5 of incorporation or bylaws for acts to be taken by the corporation,
6 its board of directors, or its shareholders.

7 B. Nothing contained in this article shall limit the
8 obligation of a holder, owner, or subscriber to an obligee of the
9 corporation when:

10 (1) the holder, owner, or subscriber has expressly
11 assumed, guaranteed, or agreed to be personally liable to the
12 obligee for the obligation; or

13 (2) the holder, owner, or subscriber is otherwise
14 liable to the obligee for the obligation under this Act or another
15 applicable statute.

16 C. Any person becoming an assignee or transferee of
17 certificated shares or of uncertificated shares or of a
18 subscription for shares in good faith and without knowledge or
19 notice that the full consideration therefor has not been paid shall
20 not be personally liable to the corporation or its creditors for
21 any unpaid portion of such consideration.

22 D [E]. An executor, administrator, conservator, guardian,
23 trustee, assignee for the benefit of creditors, or receiver shall
24 not be personally liable as a holder of or subscriber to shares of
25 a corporation, but the estate and funds in his hands shall be so
26 liable.

1 E [D]. No pledgee or other holder of shares as collateral
2 security shall be personally liable as a shareholder.

3 SECTION 2. The importance of this legislation and the
4 crowded condition of the calendars in both houses create an
5 emergency and an imperative public necessity that the
6 constitutional rule requiring bills to be read on three several
7 days in each house be suspended, and this rule is hereby suspended,
8 and that this Act take effect and be in force from and after its
9 passage, and it is so enacted.

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAR 17 REC'D

FISCAL NOTE

March 15, 1989

TO: Honorable O. H. "Ike" Harris, Chairman
Committee on Economic Development
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 1427
By: Henderson

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 1427 (relating to liability of subscribers and shareholders of Texas business corporations) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, JWH, AL, SKM, BL

HOUSE COMMITTEE REPORT

89 APR 25 PM 3:40
OFFICE OF THE CLERK OF THE HOUSE OF REPRESENTATIVES

1st Printing

By: Henderson
(Dutton)

S.B. No. 1427

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(1) Such shares other than the obligation to pay to the corporation the full amount of the consideration, fixed in compliance with Article 2.15 of this Act ~~[as-provided-by-law]~~, for which such shares were ~~[issued]~~ or are to be issued;

(2) any contractual obligation of the corporation on the basis of actual or constructive fraud, or a sham to perpetrate a fraud, unless the obligee demonstrates that the holder, owner or subscriber caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, or subscriber; or

(3) any contractual obligation of the corporation on the basis of the failure of the corporation to observe any

1 corporate formality, including without limitation: (a) the failure
2 to comply with any requirement of this Act or of the articles of
3 incorporation or bylaws of the corporation; or (b) the failure to
4 observe any requirement prescribed by this Act or by the articles
5 of incorporation or bylaws for acts to be taken by the corporation,
6 its board of directors, or its shareholders.

7 B. Nothing contained in this article shall limit the
8 obligation of a holder, owner, or subscriber to an obligee of the
9 corporation when:

10 (1) the holder, owner, or subscriber has expressly
11 assumed, guaranteed, or agreed to be personally liable to the
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13 (2) the holder, owner, or subscriber is otherwise
14 liable to the obligee for the obligation under this Act or another
15 applicable statute.

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19 notice that the full consideration therefor has not been paid shall
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4 crowded condition of the calendars in both houses create an
5 emergency and an imperative public necessity that the
6 constitutional rule requiring bills to be read on three several
7 days in each house be suspended, and this rule is hereby suspended,
8 and that this Act take effect and be in force from and after its
9 passage, and it is so enacted.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

4-24-89
(date)

Sir:

We, your COMMITTEE ON BUSINESS AND COMMERCE,

to whom was referred SB 1427 have had the same under consideration and beg to report
(measure)

back with the recommendation that it

- ☒ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. ☒ yes ☐ no An actuarial analysis was requested. ☐ yes ☒ no

An author's fiscal statement was requested. ☐ yes ☒ no

A criminal justice policy impact statement was prepared. ☐ yes ☒ no

A water development policy impact statement was requested. ☐ yes ☒ no

☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars for placement on the ☐ Local, ☐ Consent, or ☐ Resolutions Calendar.

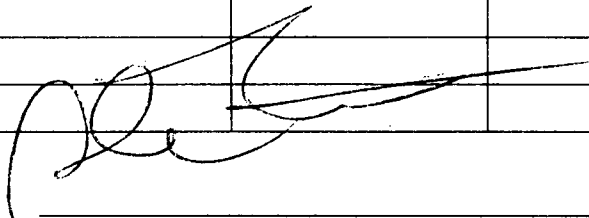
This measure ☐ proposes new law. ☒ amends existing law.

House Sponsor of Senate Measure Dutton

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wolens, Ch.	<input checked="" type="checkbox"/>			
Dutton, V.C.	<input checked="" type="checkbox"/>			
Connelly, C.B.O.	<input checked="" type="checkbox"/>			
Fraser	<input checked="" type="checkbox"/>			
Gavin				<input checked="" type="checkbox"/>
Hill, A.	<input checked="" type="checkbox"/>			
Hilbert	<input checked="" type="checkbox"/>			
Horn	<input checked="" type="checkbox"/>			
Smithee				<input checked="" type="checkbox"/>

Total 7
0 aye
0 nay
0 present, not voting
2 absent


CHAIRMAN
1 Deborah K. Wall
COMMITTEE COORDINATOR

BILL ANALYSIS

Background

Article 2.21, Texas Business Corporation Act, currently provides that a holder of shares is under no obligation to the corporation or its creditors except for the full amount of the consideration for which the shares were issued. The basic rule that shareholders are not personally liable for the contractual obligations of a corporation is subject to the exception that personal liability may be imposed if the corporation is used by its shareholders as a means of perpetrating a fraud for their personal benefit. The Supreme Court of Texas, however, recently held shareholders liable for the debts of the corporation on a theory of constructive fraud. Castleberry v. Branscum, 721 S.W.2d 720 (Tex. 1986). Constructive fraud has been defined as the break of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidences, or to injure public interests.

Purpose

As proposed, S.B. 1427 amends the Texas Business Corporation Act to expand the limited liability of a subscriber or shareholder to include contractual obligations of the corporation on the basis of actual or constructive fraud or on the basis of the failure of the corporation to observe any corporate formality.

Rulemaking Authority

It is the committee's opinion that S.B. 1427 does not grant any additional rulemaking authority to a state officer, institution, or agency.

Analysis

SECTION 1. Amends Article 2.21, Texas Business Corporation Act, as follows:

Art. 2.21. A. Deletes the words "certificated" and "uncertificated" in describing a holder of shares. Specifies that the limited liability applies to owners of beneficial interests in shares and share subscribers whose subscriptions have been accepted. Replaces "creditors" with "obligees."

(1) Makes express reference to Article 2.15 of this Act, which fixes the amount of consideration for which shares may be issued.

(2) Provides that shareholders are not liable for the contractual obligations of a corporation on the basis of actual or constructive fraud, unless an obligee demonstrates that the holder, owner, or subscriber used the corporation to perpetrate the fraud on the obligee for their personal benefit.

(3) Provides that the failure of the corporation to observe any corporate formality will not be a ground for imposition of personal liability on shareholders.

B. Provides that this Article does not limit liability when a holder, owner, or subscriber has expressly agreed to be liable or

S.B. 1427

By: Henderson (Dutton)

is otherwise liable for an obligation under this Act or under another applicable statute.

SECTION 2. Emergency clause.

SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance with Rule 4, Section 12, Rules and Procedures of the House of Representatives for a public hearing to be held April 24, 1989 for HB2571, the companion to SB 1427. SB 1427 was substituted for HB 2571. SB 1427 was laid out. Dennis Anderson, representing the Texas Business Law Foundation, testified for the bill. There was no one present to testify against the bill. A motion was made to report the bill favorably to the House with a recommendation that it do pass. The motion prevailed by a vote of 7 ayes, 0 nays, 0 PNV and 2 absent.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 21, 1989

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: Senate Bill No. 1427,
as engrossed
By: Henderson

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 1427, as engrossed (relating to liability of subscribers and shareholders of Texas business corporations) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Criminal Justice Policy Impact Statement: No change in the sanctions applicable to adults convicted of felony crimes is anticipated.

Source: LBB Staff: JO, JWH, AL, SKM, CKM

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAR 17 REQ'D

FISCAL NOTE

March 15, 1989

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Ере
24/11/20

S.B. No. 1427

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S.B. No. 1427

1 corporate formality, including without limitation: (a) the failure
 2 to comply with any requirement of this Act or of the articles of
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9 passage, and it is so enacted.

efe

S.B. No. 1427

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1427 passed the Senate on April 18, 1989, by the following vote: Yeas 28, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1427 passed the House on May 12, 1989, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAR 17 REC'D

FISCAL NOTE

March 15, 1989

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Senate Chamber
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LEGISLATIVE BUDGET BOARD

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By: Henderson

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Source: LBB Staff: JO, JWH, AL, SKM, CKM

S. B. No. 1427

By

Henderson

AN ACT relating to liability of subscribers and shareholders of Texas business corporations.

3-10

Filed with the Secretary of the Senate

ECONOMIC DEVELOPMENT

MAR 13 1989

Read and referred to Committee on

APR 10 1989

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

APR 18 1989

Senate and Constitutional Rules to permit consideration suspended by:

unanimous consent

____ years, ____ nays

APR 18 1989

Read second time, _____, and ordered engrossed by:

unanimous consent
a viva voce vote

____ years, ____ nays

Caption ordered amended to conform to the body of the bill.

APR 18 1989

Senate and Constitutional 3 Day Rule suspended by a vote of 28 yeas, 0 nays.

APR 18 1989

Read third time, _____, and passed by 28 yeas, 0 nays.

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

April 18, 1989
4-19-89

Engrossed

Sent to House

Engrossing Clerk

Patsy Saw

MAY 10 1989

Motion to postpone further consideration
of SB No. 1427 until Thurs
May 11 at 10AM
prevailed by a non-record vote.

APR 19 1989

Received from the Senate

APR 20 1989

Read first time and referred to Committee on

APR 24 1989

Reported favorably amended, sent to Printer at

1:35 pm

APR 25 1989

Printed and Distributed

3:48 pm

APR 28 1989

Sent to Committee on Calendars

8:41 am

MAY 11 1989

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of ____ yeas, ____ nays ____ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ____ yeas, ____ nays ____ present not voting.

MAY 12 1989

Read third time (amended); finally passed (failed) by a (Non-Record Vote) Record Vote of

____ yeas, ____ nays ____ present not voting

Caption ordered amended to conform to body of bill.

MAY 15 1989

Returned to Senate.

Betty Murray

CHIEF CLERK OF THE HOUSE

MAY 15 1989

Returned from House without amendment.

Returned from House with ____ amendments.

Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, _____, and _____.

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommended to Conference Committee

_____ Conferees discharged

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays